

Liber N N Stocket could not be damnified, no trespass being committed ag<sup>t</sup> him, nor could the Sheriffe upon any Execucōn for a private person sett the broad arrow being the proper marke for his Lopp for his own dues & for rents & Levyes Nor can any Execucons for private persons affect goods or tobacco of another persons though in the debtors house, but an accon will lye ag<sup>t</sup> the Sheriffe for wrongfully takeing & detaining such Goods so illegally levied, or they may be replevied if paid &, delivered away, or if they there remaine & the property unaltered, the party clayng property in them may legally take the same away, notwithstanding such illegall Levy as this case is Besides the accon as now comēced & the judgem<sup>t</sup> Thereupon is Erronious, in that the plaintiffe in the action ought to have sued upon the Act of Assembly made ag<sup>t</sup> persons takeing away tobacco marked & received by the Sheriffe, & so itt ought to have bin as well on the behalfe of himselfe as the Lord Prop<sup>ry</sup> & the party offending to pay foure fold & to incurre other penalties as by the said Act, otherwise either the Lord Prop<sup>ry</sup> doth loose his moiety or the Defend<sup>t</sup> may be againe vexed by M<sup>r</sup> Taillor by way of Informacōn on the Act, if the party hath done as by the declaracon is supposed

6<sup>thly</sup> The action (if any) ought to have bin in trespass only & not in trespass upon the case, the same being alleadged to be done vi & armis w<sup>ch</sup> is altogether erronious

7<sup>thly</sup> The plea is not guilty of the trespass &c & issued joyned on that in trespass, which is a variance from the Record of the declaracōn, & in that particuler manifestly erronious

8<sup>thly</sup> The names of the jury impannelled are not mencōned in the Record which ought to be done, that inspeccōn being had of them, the Court might know if they be boni & legales homines according to the venire facias which is vitious & erronious

9<sup>thly</sup> The jury itt seemes by the Record proceed ex parte upon an affidavit drawn & penned by M<sup>r</sup> Taillor himselfe, which ought not to be admitted in any case for affidavits to be read & the party p<sup>r</sup>sent to sweare viva" voce, that (if occasion were) crosse questions might be asked by the Court. but M<sup>r</sup> Tailors Oath either by Affidavit or viva voce ought not to be admitted in any case, he swearing on his owne behalfe, & ought to have bin the proper party plaintiffe, & did in Court declare himselfe concerned as a party, & so refused to sitt as Judge in Court, but gave M<sup>r</sup> Hill directions to give the charge to the jury, which makes nothing to condemn the defend<sup>t</sup> unlesse unlawfull seizures be justifiable; for the tobacco was before paid by Knighton & to him delivered for rent arreare on the plantacon where Knighton lived, & the houses delivered to Peca as a reentry for non paym<sup>t</sup> of rent And the said Peca before Execucōn in quiet possession thereof, & had paid the tobacco to Co<sup>t</sup> Chew who carryed the same away & not Peca, & in that M<sup>r</sup> Chew the more proper trespasser if any were done And Knightons deposicon makes for the said Peca